

TOWN OF CALAIS
Development Review Board

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Re: Darien McElwain, Applicant, Conditional Use Permit
Application #2016-36

Introduction and Summary

This is an application brought by Darien McElwain (Applicant) for a Conditional Use Permit for an expansion to a second floor and a proposed addition to her home in the Shoreland District.

This matter came before the Development Review Board on November 3, 2016. Board members present were Peg Bowen, Chair, Ruth Porter, Barbara Weedon, Eileen Simpson and alternates Janice Ohlsson, and Denise Wheeler. Also present were Darien and Ruby McElwain, Dorothy Naylor, John McCullough and Tim Scandale, secretary

The record was closed after a deliberative meeting on November 10, 2016.

Finding of Facts

This property is a preexisting nonconforming lot in the Shoreland District. The existing dwelling is within the 50' Lakes and Ponds Buffer with the proposed addition extending beyond that by 17'. The entire property falls within the required Minimum Setback/Mean Water Mark of 150' of the Dimensional Standards

The addition that the applicant proposes to build to her house in the Shoreland district includes a vertical expansion for a second floor within the existing footprint, and for a first floor expansion creating an additional impervious surface of 320 sq. ft. The expansion of an impervious surface within 150' of a Pond requires DRB approval as a Conditional Use in the Shoreland District. The vertical expansion of a nonconforming structure is also subject to Conditional Use review.

The applicant's permit application included a scaled site drawing of the property showing all existing structures, pertinent dimensions to property lines and pond shoreline and the location and dimensions of the proposed addition. The applicant described the addition as including a second floor over part of the house increasing the height of the house to 30'. The first floor expansion is to be built on the eastern portion of the house farthest from the water. The pitch of the new roof is directed away from the pond.

The applicant presented copies of her application for a Vermont State Shoreland Protection Permit for this project and the Permit received which had been approved with Specific and Standard Conditions. This State Permit is on record at the Town Office. In this application the applicant had suggested initiatives to mitigate the increase in impervious surface such as converting part of the lawn to natural

vegetation, removing a portion of a retaining wall to increase turtle habitat, or using a live roof on part of the addition. At the hearing the applicant expressed interest in pursuing those initiatives and reported that she had been adding native plants along the shoreline and planned to restore the wooded area on the northern portion of the property.

Conclusions of Law

Table 2.4(A) of the Regulations for the Shoreland District affirms the value of our lakes and ponds to the Town and its residents. It addresses the need to protect them from pollution and to minimize developmental impact from (among other things) the increase of impervious surfaces and disruption of the ecological shoreland buffer.

The applicant's home is a noncomplying structure on a nonconforming small lot which may be allowed to be expanded horizontally or vertically only with approval of the DRB, subject to conditional use review (Section 3.8 (B) 4). The DRB finds all required and discretionary standards for Conditional Use under Section 5.3 have been met. The shoreland district dimensional standard for maximum building height of 35' is also met with a proposed vertical expansion of the second floor to 30'. The first floor vertical addition will be on the opposite side of the house from the lake and will extend beyond the 50' lake and pond buffer.

Approval by the DRB of the creation of the new impervious surface within 150' of the pond is also subject to Conditional Use Review and a finding that the proposal is consistent with the standards of the regulations (Section 5.3). The DRB finds that all the Required standards of the Conditional Use Review have been met.

In addition to the Required standards the DRB may also consider Discretionary standards and impose conditions as appropriate to minimize or mitigate adverse impacts of a proposed development. The applicable Discretionary standards to be addressed pertain to landscaping, required buffers, and erosion control (Section 5.3 (E) 3,4 and 5).

The owner has reported on her work to add native plants to the landscape within the buffer zone and her plans to restore a woodland area and she is to be encouraged to continue with these efforts.

The dimensional requirements of the Shoreland district include a lakes and ponds buffer of 50'. All but 2' of the existing house occupies this protected buffer zone, and in the space between the house and the pond there is a strip of mowed lawn up to the edge of the water. The buffer requirements are for a naturally vegetated strip to be maintained and left undisturbed with an exception allowed for an unpaved path not exceeding 5' in width for access to the water. (Section 3.14 A, B 3).

The first floor addition will be on the opposite side of the house and will extend beyond the 50' buffer and the existing footprint of the house. The roof of the addition adds 320' of impervious surface to the property. The roofline will discharge water away from the pond reducing the velocity of surface runoff to the water, however, efforts to restore the integrity of the buffer zone along the pond would be essential and should be addressed in mitigation of this increase of impervious surface.

The owner has reported on her work to add native plants to the landscape within the buffer zone and her plans to restore a woodland area and she is to be encouraged to continue these efforts.

Erosion controls measures are to be in place during construction to protect the pond.

It is to be noted that a Vermont State Shoreland Protection Individual Permit has been approved with specific and standard conditions to create impervious surface within the Protected Shoreland Area

ORDER

Approval for a Conditional Use Permit is granted for the project as described in the permit application as presented with the following conditions:

1. That in accordance with the lakes and ponds buffer requirements of the Shoreland District a naturally vegetated strip is to be maintained and left undisturbed to replace the existing areas of mowed grass between the house and the pond. This vegetated strip will fill the space between the water's edge and the retaining wall below the deck abutting the west wall of the house. In line with the north and south walls of the house the strip will enlarge in width to a minimum of 10' as it blends into the existing shrubs natural vegetation and woods that align the pond's edge of the property.

One 5' wide unpaved path is allowed to provide access to the pond.

2. That the contractor will put in place erosion control measures before the start of construction. Any areas of ground disrupted during and following construction are to be reseeded and mulched.

The DRB acknowledges and appreciates Darien McElwain's previous work to protect the pond from runoff and would like to encourage McElwain to explore the possibilities of putting in a living roof.

Members of the Calais Development Review Board:


Margaret L. Bowen, Chair

11/28/16
Dated


Ruth K Porter, Member

11/29/2016
Dated

Eileen Simpson, Member

Dated


Barbara S Weedon, Member

11-28-16
Dated


Janice G Ohlsson, Alternate

11-28-2016
Dated


Denise Wheeler, Alternate

11/28/16
Dated

Notice of Right to Appeal: In accordance with 24 VSA sections 4471 and 4472, this decision may be appealed within 30 days of the date to the Vermont Environmental Court. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy to the Calais Zoning Administrator and to every interested person who appeared at the DRB hearings. Failure of any interested person to appeal within the specified 30 day period shall result in the interested person being bound by this decision. Thereafter, the interested person shall not contest, either directly or indirectly, the decision of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of 24 VSA Chapter 117. See also Town of Calais Land Use and Development Regulations, Section 1.7, Appeals.